

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA)

v.)

GERMAN CASTRO-MARTINEZ)

NO. 3:14-00031

Judge Haynes

MOTION TO CONTINUE SENTENCING HEARING

The United States of America, by its attorneys David Rivera, United States Attorney for the Middle District of Tennessee, and Brent A. Hannafan, Assistant United States Attorney, hereby requests this Court continue the sentencing hearing presently set for October 17, 2014.

In defendant's Sentencing Memorandum, filed on October 14, 2014, defendant argues that this Court should find the defendant's prior conviction of Aggravated Burglary in Tennessee does not qualify as a "burglary of a dwelling" under the Guidelines and, therefore, defendant is not subject to a 16-level enhancement. As stated in the PSR, this objection is the same as objection raised by the defendant in the case of *United States v. Yahir Lara*, Case No. 3:14-00006 in this District (before Chief Judge Sharp) on appeal in Case No. 14-5613 in the Sixth Circuit Court of Appeals. (PSR, Addendum). Counsel for the defendant in this case, Michael Holley, is also appellate counsel in the *Lara* case.

In the *Lara* case, Judge Sharp applied a 16-level enhancement for the defendant's prior conviction of Aggravated Burglary in Tennessee. The defendant in *Lara* appealed that ruling. The appeal in *Lara* has been fully briefed on an expedited schedule and the Sixth Circuit has ordered it would rule without oral argument. Because the same legal issue is involved in both this case and the *Lara* case, this Court should continue the sentencing in this case until the Sixth Circuit has ruled in *Lara*.

ORDER
This motion
is GRANTED
pending the
Sixth
Circuit's
opinion
in Lara
10-16-14

In this case, the defendant has requested a sentence of 18 months. But if this Court were to reject defendant's position, his Guidelines range would be 46 to 57 months. Defendant was arrested on February 19, 2014 and has now been detained for approximately 8 months. Even if this Court were to find in the defendant's favor on the enhancement issue and impose the requested sentence of 18 months, the defendant would have another approximately 7 months to serve (assuming the full good time credit).

WHEREFORE, the United States respectfully requests this Court continue the sentencing hearing until the Sixth Circuit has issued its opinion in the *Lara* case or, in the alternative, at least six months from now.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 15, 2014, I electronically served one copy of the United States' above Motion with the Clerk of the Court by using the CM/ECF system, which will notify all defendants' counsel.

s/ Brent A. Hannafan
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